IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2335 OF 2006

Shri Vinod Murji Savla ... Petitioner

V/s

1. Shri Jitendra Karsandas Thakkar & ors. ... Respondents

Mr. G.V. Murti for the petitioner.

Mr. Girish Godbole with Vinod Thakkar for Respondent Nos. 1 to 7.

Mr. Vishal i/by Anjal Trivedi for Resp.Nos. 15 & 16.

Mr. S.R. Mishra for Respondent No.18.

Mr. A.R. Desai, Representative of Court Receiver present.

CORAM: P.V. KAKADE, J.

DATED: 5TH APRIL, 2006

P.C.:

1. Heard learned counsel for all the concerned parties. Perused the record.

2. The petitioner plaintiff has impugned the order dated 20.2.2006 passed by the trial Court partly rejecting the application for amendment of the plaint and partly rejecting the Interim Notice No. 120 of 2006

in R.A.D. Suit No. 501 of 2001 filed by him.

3. The petitioner has filed R.A.D. Suit No. 501 of 2001 for declaration of his tenancy in respect of the suit property and for certain permanent injunctions against the defendants not to interfere with his peaceful use, occupation and possession of the suit premises and from dispossessing him except by due process of law and has sought to rely upon amended statements made by him in the plaint.

4. It is an admitted position that, on two earlier occasions the plaint came to be amended and third amendment application is filed with a view to bring on record the facts which have taken place pertaining to the dispute after those amendments were made and the Court Receiver was appointed by the concerned Court.

5. In this regard, it must also be pointed out before going to the merits of the petition that Writ Petition No. 9116 of 2004 was adjudicated by this Court by order dated 10.3.2005 which was also preferred by the present petitioner and which came to be disposed of with direction that pending suit would be expedited and the Trial Court was directed to hear and dispose of the suit

expeditiously at any rate within a period of one year from the date of receipt of the order dated 10.3.2005. It was further directed that the amendment application made by the petitioner shall be decided by the Trial Court within a period of two months from the date of the order. It is to be noted that since the order was in the writ petition, said application for amendment was partly allowed.

6. On this back ground, the third application for amendment of the plaint came to be filed as per the schedule which is annexed to the petition at page Nos. 60 to 118.

7. I have perused the entire contents of the schedule alongwith the contents of the plaint. I have also perused the impugned order which is exhaustively passed after taking into account all the facets involved in the amendment application. On hearing both parties and perusing the record, the Trial Judge was of the opinion that the notice was to be made absolute only to the extent adding proposed respondent as defendant No.18. The notice was also made absolute for amendment of prayer clause (a) and para 9 of the plaint as per the schedule and remaining amendment sought for came to be

rejected on various grounds. Hence the present petition to the extent of rejected part of the schdule of the amendment.

8. On careful scrutiny of the entire petition vis-a-vis the facts and circumstances, I have no doubt that the Trial Judge has passed the order which is found to be just, legal and proper. It is obvious from the record that the contents which are sought to be introduced in the plaint were well within the knowledge of the plaintiff but it appears that the plaintiff used to take one after another application with a view to delay the matter and, therefore, I agree with the findings recorded by the Trial Court that the application is taken out only with sole intention to delay the proceedings and defeat the directions given by this Court in Writ Petition No. 9116 of 2004 dated 10.3.2005 and, therefore, the petition is malafide.

9. Apart from this aspect, it is to be noted that basically what is sought to be introduced are the contents which at the most could form part of the evidence and it is quite settled position of law that the evidence cannot be allowed to be pleaded. Similar would be the reasoning so far as introduction of

documents sought to be produced by way of amendment. It is needless to mention that the documents could be introduced in the course of the evidence by confronting the parties with permission of the Court and for that purpose no amendment of the pleadings is required. The learned Trial Judge has also observed that the amendment, if allowed, would change the character of the suit and would also change the cause of action and it would further effect in taking away the accrued right of the other side which cannot be allowed in law.

10. Be that as it may, the fact remains that it is not a fit case to interfere with under the writ jurisdiction contemplated under Art. 227 of the Constitution of India and, as such, the petition stands dismissed with no order as to costs.

11. It is clarified that the period of disposal of the suit given to the Trial Court has already passed and, therefore, the period to dispose of the suit is extended by four months from the date of this order.

Parties to act on the authenticated copy of this order.

.....